**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE**

**MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929**

**WP(C).No. 25602 of 2007(W)**
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**PETITIONER:**
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**SAYI PRASAD C.,**
**CHACKOLANGARA HOUSE, KODIYERI,**
**PARAL P.O., THALASSERY, KANNUR.**

**BY ADV. SRI.M.SASINDRAN**

**RESPONDENTS:**
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**1. THALASSERY MUNICIPALITY,**
**REPRESENTED BY ITS SECRETARY.**

**2. THE SECRETARY,**
**THALASSERY MUNICIPALITY.**

**3. THE MUNICIPAL ENGINEER,**
**THALASSERY, THALASSERY MUNICIPALITY.**

**4. THE TOWN PLANNING OFFICER,**
**THALASSERY MUNICIPALITY.**

**BY ADV. SRI.I.V.PRAMOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 25602/2007 W**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE BUILDING PLAN.**

**EXT.P1A. COPY OF THE SITE PLAN.**

**EXT.P2. COPY OF THE COMMUNICATION DT. 6/8/07 BEARING NO. E5/BA.155/07-08.**

**EXT.P3. COPY OF THE GOVT. ORDER DT. 29/11/83.**

**EXT.P4. COPY OF THE JUDGMENT DT. 16/1/2006 IN WPC NO. 33317/2005.**

**EXT.P5. COPY OF THE JUDGMENT IN WPC NO. 28206/2006.**

**RESPONDENT'S EXHIBITS NIL.**

*True copy*

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**PIUS C. KURIAKOSE, J.**

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W.P.(C) No. 25602 OF 2007

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Dated this the 17th day of September, 2007

**JUDGMENT**

There seems to be some genuineness in the grievance which is voiced by the petitioner in this Writ Petition under Article 226 of the Constitution. Respondents 1 to 3 are the Thalassery Municipality, Secretary Thalassery Municipality and the Municipal Engineer, Thalassery. The 4th respondent is the Town Planning Officer, Thalassery Municipality. Under challenge is Ext.P2 order of the Municipality by which Ext.P1 plan submitted by the petitioner for permission to construct a residential building in the property owned by him was rejected. The reason for rejection is that the site over which the building is proposed to be constructed is shown as a Commercial Zone as per the master plan. Ext.P3 is the Government Order on the basis of which a development plan has been sanctioned for Thalassery Town under Section 14(3) of the Madras Town Planning Act, 1920. The petitioner submits that till this moment there has been no proposal for acquisition of any portion of the petitioner's property and no notification under the provisions of the Land Acquisition Act has been issued so far. Petitioner further points out that though a development plan was sanctioned for the Thalassery Town as per the master plan, the same

has not been acted upon and no industry has so far been set up pursuant to the plan. The area is a pucca residential area without even a single commercial or industrial establishment for setting up of any commercial units in future. Ext.P3 has become redundant and oppressive. Petitioner mentions names of several persons in the Municipal area who have been issued with permits notwithstanding the existence of the master plan which is referred to in Ext.P2. Petitioner submits that Ext.P2 intimation, in so far as the same is issued by the Municipal Engineer, is without jurisdiction since the power to approve and reject plans are with the Municipal Secretary only. Reliance is placed on the judgment of the Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465]. Petitioner points out that against similar rejection orders the concerned parties preferred writ appeals before this court and this court interfered by passing judgments, Exts.P4 and P5.

2. Heard Sri.M.Sasindran, learned counsel for the petitioner and Sri.I.V.Pramod, Standing Counsel for the Thalassery Municipality. Mr.Sasindran would draw my attention to my own judgment in WP(C) No.22259 of 2006 apart from relying on the judgments in WP(C) No.3317 of 2005 and WP(C) No.28206 of 2006(which is another judgment authored by myself).

3. Having regard to the submissions addressed at the Bar and the principles emerging from the Division Bench decision in **Padmini**'s case (supra), Full Bench judgment of this Court in **Francis v. Chalakudy Municipality** [1999 (3) KLT 560] and the judgment of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222] case, I am of the view that the petitioner is entitled for relief. Till this moment no notification under Section 4(1) of the Land Acquisition Act has been promulgated by the local authority for acquisition of any portion of the petitioner's property. Of course Sri.I.V.Pramod did invite my attention to the judgment of the Division Bench of this Court in **Sayeesh Kumar v. State of Kerala** (2005(4) KLT 1027) and submit that as per the master plan approved by the Government vide notification, the area in question is a commercial area and even the Government has not power to grant exemption. But, according to me, in this case where for the past more than 20 decades the master plan has not been implemented, as regards the commercial development proposed therein, it is not just or proper to insist that valuable residential property belonging to the petitioner should remain idle. The Writ Petition accordingly will stand disposed of issuing the following directions:

The petitioner shall submit undertaking in the form of an affidavit

in which he will state that in case the Municipality comes out with a notification under Section 4(1) of the Land Acquisition Act for acquiring any portion of the plot on which the building is proposed to be constructed within one year from today, the petitioner will not claim any compensation for the constructions. The Municipality is directed to pass fresh orders on Ext.P1 plan submitted by the petitioner, once affidavit as directed above is filed by the petitioner. Permit should be granted if the plan is otherwise in order within one month of petitioner submitting affidavit as directed above. The existence of the master plan and proposal to acquire the land at some future time shall not be a ground for rejection of the plan. It is however, clarified that even after the period of one year mentioned herein above it will be open to the Municipality to acquire the petitioner's property for any genuine public purpose. But under such an event the petitioner will be entitled for compensation not only for the land, but also for the constructions put up by him on the strength of the permit to be issued to him pursuant to this judgment.

**PIUS C. KURIAKOSE, JUDGE**

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